

In re:	:	
	:	Case No.: 16-00585
Douglas R. Clouse	:	Chapter 13
	:	Judge John J. Thomas
Debtor(s)	:	*****
	:	
Wells Fargo Bank, N.A. as successor by merger to Wachovia Bank, N.A.	:	Date and Time of Hearing
	:	Place of Hearing
Movant,	:	October 5, 2017 at 09:30 a.m.
vs	:	
	:	Max Rosenn U.S. Courthouse
Douglas R. Clouse	:	197 South Main Street
Heidi A. Clouse	:	Wilkes-Barre, PA, 18701
	:	
Charles J. DeHart III	:	
Respondents.	:	

AND NOW, comes Wells Fargo Bank, N.A. as successor by merger to Wachovia Bank, N.A. ("Creditor"), by and through its attorneys Manley Deas Kochalski LLC, files this Motion for Relief from the Automatic Stay with 30-day waiver, pursuant to Bankruptcy Code §§ 361, 362, 1301, and other sections of Title 11 of the United States Code, and under Federal Rules of Bankruptcy Procedure 4001 and 6007 for an order conditioning, modifying, or dissolving the automatic stay imposed by Bankruptcy Code § 362, averring as follows:

1. This is an action arising pursuant to a case under Title 11 of the United States Code.
2. Creditor is a lending institution duly authorized to conduct business in the Commonwealth of Pennsylvania.
3. Creditor is a party-in-interest in the above referenced Bankruptcy matter as it is a secured creditor of the Debtor.

4. Douglas R. Clouse ("Debtor") filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on February 15, 2016, ("Petition").

5. The Debtor and Heidi A. Clouse ("Co-Debtor") are currently obligated to Wells Fargo Bank, N.A. as successor by merger to Wachovia Bank, N.A., under the terms of a certain Prime Equity Line of Credit Agreement & Disclosure Statement, dated March 3, 2007, with an original credit limit of \$125,000.00 executed by Debtor and Co-Debtor (hereinafter "Debt Agreement"). The terms of the Debt Agreement were amended by a loan modification agreement entered into by and between Wells Fargo Bank, N.A. and Debtor dated April 26, 2012 (the "Loan Modification Agreement").

6. As security for repayment of the Debt Agreement, Debtor executed a certain Home Equity Line of Credit Mortgage, dated of even date and of even amount, in favor of Wells Fargo Bank, N.A. as successor by merger to Wachovia Bank, N.A., with respect to certain real property owned by the Debtor and Co-Debtor located at 104 Masthope Plank Rd, Lackawaxen, PA 18435 (hereinafter "Mortgaged Premises") and being recorded in Pike County Recordings Office at Instrument Number 200700004576 on March 23, 2007 in Office of the Recorder of Deeds in and for Pike County, Pennsylvania ("Mortgage").

7. Debtor(s) executed a Creditor's home equity line of credit agreement (the "Debt Agreement") and agreed to be bound by its terms. The Debt Agreement is secured by a mortgage or deed of trust. Creditor is the original mortgagee/successor or beneficiary of the mortgage or deed of trust.

8. Creditor holds the second position mortgage lien on Mortgage Premises.

9. Per Debtors' schedules, Citi Mortgage holds the first mortgage lien in the amount of \$181,675.50.

10. Per Debtors' schedules there do not appear to be any junior liens on the Mortgaged Premises.

11. Debtor's Chapter 13 Plan ("Plan") provides for, inter alia, the payment of the prepetition arrearages and post petition arrears for March 2016 through July 2016 owed to Movant through the Plan and the regular monthly mortgage payments to Wells Fargo Bank, N.A. as successor by merger to Wachovia Bank, N.A. outside the Plan.

12. Debtor has failed to make post-petition mortgage payments for the past 10 months.

13. As of August 18, 2017, the unpaid principal balance and the amount past due to Wells Fargo Bank, N.A. as successor by merger to Wachovia Bank, N.A. in post-petition arrearages are \$122,729.14 and \$2,135.17, respectively.

14. Debtor's account is pre-petition delinquent as set forth in the Proof of Claim filed on 09/16/2016, Claim 3-2.

15. As of August 18, 2017, Debtor's account is post-petition delinquent as follows:

- a. 11/01/2016-05/01/2017 in the amount of \$204.54 per month; and
- b. 06/01/2017-08/01/2017 in the amount of \$296.59 per month
- c. The post petition delinquency is reduced by a post-petition suspense in the amount of \$186.38, for a total post petition default in the amount of \$2,135.17.

16. Due to said failure by Debtor and Co-Debtor to make payments when due, Creditor lacks adequate protection of its security interest in the Mortgaged Premises.

17. Creditor has not filed a foreclosure action associated with the Mortgaged Premises.

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18. The automatic stay of Section 362 of the Bankruptcy Code and the Co-Debtor Stay Section of 1301 of the Bankruptcy Code as to Heidi A. Clouse should be terminated with respect to the interest of Wells Fargo Bank, N.A. as successor by merger to Wachovia Bank, N.A. in the Mortgaged Premises, pursuant to Section 362(d)(1), because Wells Fargo Bank, N.A. as successor by merger to Wachovia Bank, N.A. lacks adequate protection of its security interest in the Mortgaged Premises and pursuant to 362(d)(2), because Debtors lacks equity in the Mortgaged Premises and it is not necessary for an effective reorganization.

WHEREFORE, Wells Fargo Bank, N.A. as successor by merger to Wachovia Bank, N.A. respectfully requests this Honorable Court to enter and order terminating the Automatic Stay and Co-Debtor Stay as it affects the interest of Wells Fargo Bank, N.A. as successor by merger to Wachovia Bank, N.A. in the Mortgaged Premises of the Debtors specifically identified in the Mortgage, and granting such other relief as this Honorable Court may deem just.

Respectfully submitted,

/s/ Kimberly A. Bonner

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The case attorney for this file is Karina
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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	:	Case No.: 16-00585
Douglas R. Clouse	:	Chapter 13
	:	Judge John J. Thomas
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Charles J. DeHart III		
Respondents.		

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion for Relief from the Automatic Stay and Co-Debtor Stay with 30-day Waiver (Second Mortgage) was served on the parties listed below via e-mail notification:

United States Trustee, 228 Walnut Street, Suite 1190, Harrisburg, PA 17101

Charles J. DeHart III, Chapter 13 Trustee, 8125 Adams Drive, Suite A, Hummelstown, PA 17036

John Arpad Poka, Attorney for Douglas R. Clouse, 509 Broad Street, Milford, PA 18337, jpoka@optonline.net

The below listed parties were served via regular U.S. Mail, postage prepaid, on September 5, 2017:

Douglas R. Clouse, 104 Masthlope Plank Rd., Lackawaxen, PA 18435

Heidi A. Clouse, 20 Grand St, Port Jervis, NY 12771-2819

Douglas R. Clouse and Heidi A. Clouse, 104 Masthlope Plank Rd, Lackawaxen, PA 18435

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9/5/17

DATE: _____

/s/ Kimberly A. Bonner

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